Supreme Court, U.S.
FILED

03 550 SEP 9 2003

No.

In The
Supreme Court of the United States

Beatrice Martone, Petitioner
v.
Phyllis G. and John Neiswanger, Respondents

United States Court of Appeals - Second Circuit
Foley Square, in the City of New York

PETITION FOR WRIT OF CERTIORARI

Beatrice Martone, Pro Se
12 Quarry Village
Cheshire, CT 06410
(203) 271-1807

QUESTIONS PRESENTED

1. Does the constitutionality of the state's post-judgment garnishment procedure allegedly violate the Supremacy Clause by permitting seizure of Social Security benefits which are "Exempt" under title 42: USC § 407.?

2. Does our Supreme Court of the United States interpret title 42: USC § 407 as prohibiting "execution" of Social Security benefits directly deposited in recipient's bank account?

3. If Connecticut General Statute 52-352a- Meaning of "Exempt" - Not subject to legal process or court order for the purpose of debt collection and C.G.S. 52-352b- Exempt Property-(g) . . . Social Security benefits . . . ; Pursuant to the foregoing and 42:USC407 Has the U.S. District Court (Janet C. Hall) and the U.S. Court of Appeals at N.Y.C. and (Rule 10C) Decision of an important federal question, that has not been settled, Would this Supreme Court, having jurisdiction, settle this important question? Are "None" of the moneys paid or payable existing under (USC) 407 subject to legal process or execution??

4. By the deprivation of my rights, privileges, & immunities by the state court judgment, the subjected execution of my Social Security benefits directly deposited to my bank checking account, as well the right of any person to any future payment under subchapter 407 of the Social Security Act, Would our Supreme Court have the power, for further consideration and for proper redress?

LIST OF PARTIES

(x) All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4 to 10
REASONS FOR GRANTING THE PETITION	11 to 12
CONCLUSION	12

INDEX TO APPENDICES

APPENDIX A	Summary Order-U.S. Court of Appeals Second Circuit @ city of New York
APPENDIX B	Order of Superior Court-Judicial District of New Haven @ Meriden, CT (Small Claims) w/April 28, 1998 - Webster Bank letter
APPENDIX C	My letter of June 20, 1996 from Social Security Admin., in Wash., D.C. - I mailed to Joseph Dudra, clerk of Small Claims Court in June, 1996.

TABLE OF AUTHORITIES CITED

CASES

	Page
Husky v. Asmann - 1990 Tenn App - 15554a -	4
Cole v. Goldberger, Pedersen & Hochron - 1978-Misc.2d 720, 410 NY S 2d 950	6
Rosa v. Warner Elect. Contract-1994-COLO-870 p2d 1210 44 SOC SEC Rep. Serv. 133	8
Harris v. Bailey - 1983 - WD, VA - 574 - F-Supp 966	9
DiMartino v. Richens, Et Al - Conn. S.C. 16818-May, 2003-263 C 639	11

Statutes and Rules

	Page
Statute: 28 USC § 1254 (1)	2
Connecticut General Statute-52-352b(g) Exempt Property-(g) Social Security benefits.	3
Conn. General Stat. 52-352(a) Meaning of: "Exempt"	3
Federal Law-Social Security Act - 42: USC § 407 - Assignment	3

Rules

Federal Rule Appellate Procedure 28(j) Fed.R.App. P 28(a)(5)-Argument maybe preceded by a Summary.	8
Full Faith and Credit Act - 28 USC § 1738	@ App. "A"

Other

Supremacy Clause of the U.S. Constitution - Article 6, Clause 2.	9
42 U.S.C. § 1983, Equal Protection -	11

In The

Supreme Court of the United States

Petition For Writ of Certiorari

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

(x) For cases from federal courts.

The opinion of the United States court of appeals appears at Appendix A to the petition and is (x) is unpublished.

JURISDICTION

(x) For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 23, 2003.

(x) No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Social Security Act - 42 USCS § 407

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law enacted before, on, or after April 20, 1983, may be construed to limit, supercede, or otherwise modify the provisions of this section except to the extent that it does so by the express reference to the section.

2. Connecticut General Statute §-52-352a. - Definitions for Exempt Property Provisions. For the purpose of this section and section 52-352b . . . , the following terms shall have the following meanings:

(c) "Exempt" means unless otherwise specified, not subject to any form of process or court order for the purpose of debt collection.

(d) "Exemptioner" means the natural person entitled to an exemption under this section or section 52-352b.

3. Conn. Gen. Statute 52-352b. Exempt Property. The following property of any natural person shall be exempt:

(g) Workers' compensation, Social Security, veterans and unemployment benefits.

STATEMENT OF THE CASE

The United States Court of Appeals - Second Circuit New York City on June 23, 2003 issued a Summary Order Commencing - Page 3, paragraph 3, first sentence:

> "The document in question had been used by Martone to request an exemption, Martone had claimed on the form that her bank account was exempt as containing Social Security funds under Conn. Gen. Stat. 52-356b(g). The form's second page contains a handwritten note reading "Denied (Silbert,J) 6-28-96."

I, as the appellant, plaintiff Beatrice Martone, Pro Se in my brief of November, 2002 to the above Court of Appeals - Statement of Subject Matter - pge 1, parag. 1 stated:

> "A Bank Execution in the amount of $1,475.32 by the defendants, Phyllis Guardiano-Neiswanger and John Neiswanger. By their process server, a Waterbury, CT deputy sheriff on July 10, 1996, they willfully "concealed" a court order dated July 9, 1996 that stated "the bank Execution is Denied by the court (Silbert,J) on June 28, 1996. All as on file in the records of the Superior Court in Meriden, CT-By Joseph Dudra Clerk of the (Small Claims) court at that time. Docket # SCM9603-1724-in the case entitled-Guardiano-Neiswanger, ETAL v. Beatrice M. Rosato."

Also, on page 1, last parag. of my brief:

> "Whereupon a summer day in 1998, law librarian (Anne Sullivan) at the U.S. District Court in New Haven, CT helped me to find the Social Security Act. I came upon the provision titled 42:USCS § 407-Assignment.

As well this Citation in Husky v. Asmann 1990 Tenn App-15554a -

> "United States Supreme Court interprets 42:USC 407 as prohibiting execution of Social Security

benefits deposited in recipient's bank account and supercedes state law under the Supremacy Clause."

In January 1996, I had semi-retired (working part-time) at the age of 62 years, on my own Wage-earning Social Security Record. As a single mother at that time for over 15 years and four children, my monthly Social Security benefit check was only $384.00, enough if put aside monthly would pay the town taxes due twice yearly for approximately ($1300.00) in July, 1996 on my 12 Quarry Village condominium.

Sometime between June 10th and July 10th, 1996, I received a letter from Webster Bank reading: "An execution form and a "Hold had been placed against my account (#13583840). My only account at the bank being the direct deposit checking account of my Social Security check for the monthly $384. since January, 1996 when I retired.

Via telephone I contacted the Social Security Administration in Washington, D.C., telling them of the letter from the bank regarding the execution and a freezing of my funds. In response I received a letter dated June 20, 1996 from them stating concisely:

> "If you want anyone else to have this information you may send them this letter.- "IMPORTANT INFORMATION" "MRS. MARTONE HAS BEEN GETTING SOCIAL SECURITY CHECKS SINCE 01/96 ON THE AMOUNT OF $384.00 MONTHLY. HER CHECK HAS BEEN DEPOSITED IN HER CHECKING EVERY MONTH."
>
> "SOCIAL SECURITY ADMIN.
> Washington, D.C."

I mailed it immediately to the clerk of the Small Claims court, Joseph Dudra, the letter from Social Security showing my name on the letter Beatrice Martone (Rosato), 12 Quarry Village, Cheshire, CT. To be further *Prima Facie evidence, as to the *existence of the exemption, for the hearing before Judge Silbert on June 28, 1996.

I received a letter dated July 10, 1996 from Webster Bank - Service and Process Department reading:

> "In response to a bank execution the amount of $1,475.32 was withdrawn from acct. #13583840. A check was sent to New Haven County Deputy Sheriff Office (Waterbury, CT.)"

I had already made my:

> Mortgage payment - $501.49-July 3, 1996
> Condo (monthly) fee - $200.00-July 3, 1996

I had hoped to pay my condo town property taxes by July 31st, 1996, as well as my car taxes ($1300.00) for both, approximately.

Webster Bank left $201.88 in my direct deposit Primary Account-Social Security (direct deposit) checking account, withdrawing my July 3rd Social Security Check of $384.00 in that $1,467.32 and an $8.00 sheriff's fee also was taken from my personal "exempt" assets as established by state and federal law on that bank "execution" by the Neiswangers, Etal on July 10, 1996.

Citation - Cole v. Goldberger, Pedersen & Hochron - 1978 - Misc.-2d 720, 410 NY S 2d 950.- "Postjudgment remedies in aid of the enforcement of money judgments which permit a restraint upon the personal assets of a judgment debtor in the hands of a third party such as a bank without the providing for notice to the debtor, are unconstitutionally violative of due process, as applied, to restrain a debtor's exempt assets, such as Social Security benefits, which are protected from attachment, execution, levy, or seizure by or under any legal or equitable process whatsoever as in 42:USC407.

It was not until the Spring of 1998, when I was in a financial position to file a civil action by representing myself, i.e. Pro Se.

The first contact I made in the spring of 1998 via telephone, was to Webster Bank - Service and Process Coordinator I spoke to was a Mr. Michael Trotman. In response in a letter dated April 28, 1998 from him, Re: Execution Beatrice M. Rosato

"Pursuant to your request on Webster Bank, we are responding with the following document:

> "A COPY OF THE COURT ORDER REGARDING YOUR EXECUTION, EXEMPTION CLAIM HEARING ON JUNE 28, 1996. THE ORDER IS SIGNED AND SEALED (affixed with seal of the court) BY THE CLERK OF THE COURT. *(Joseph Dudra)*."

Attached was the copy of the court order signed by-*Chief Clerk - J. Dudra on the 9th day of July, 1996.* See Appendix B pg. 2.

At my work request upon Webster Bank on June 3, 1998 I received a copy of my statement of June 6 - July 5, 1996 showing:

Date	Electronic Credit	Social Security Primary Account
07/03	US Treasury 303 Soc.Sec.	13583840
		384.00

Also, My History Print-out by request showing on:

7/10/96	12:57	DW	8.00	Execution Fee	Balance
7/10/96	12:59	DW	1,467.32	Execution	201.88

Last document requested the front and back of the bank check (of the above withdrawal-Execution on Social Security electronic credit of U.S. Treasury-Social Security Primary account #13583840) to:

New Haven County Deputy Sheriff Office - $1,467.32

Re: Beatrice Rosato-Execution See-Appendix "C"

(As presented on pg. 11/brief to Court of Appeals)

I presented to the Court of Appeals in my brief of November, 2002 according to Rules 28(a)(5)-Argument may be preceded by a summary.

A two-page document that was a *Motion for Summary Judgment with a 9cStatement (accord. Rule 9c) by the Neiswangers in the record to U.S. District Court Judge Janet Hall that was denied by that court. (dated February 25, 2000)*

The Memorandum states:

> "Mrs. Rosato is also claiming that we violated the Social Security Federal Statutory Law. We had a judgment against her that she ignored so we applied for a bank execution, she filed an exemption on the basis that she was receiving Social Security payments and therefore her account was exempt.
> The court denied her exemption, We did not violate the Social Security Act, we were granted the bank execution by the court."

The 9C Statement states (both with their signatures on Feb. 25, 2000)

> On March 6, 1996 a suit was filed in Small Claims court. On May 10, 1996 an application was filed for a Bank Execution. On June 10, 1996 Mrs. Rosato filed an exemption from Bank Execution which was denied by the court on June 28, 1996.

Citation - Rosa v. Warner Elec. Contract-1994-Colo. 870 p2d 1210 44 Soc Sec Rep Serv. 133

> "42:USC407 - Under 407 - Anti-assignment provision of this Act (Soc. Sec.) was designed to prevent use of the traditional legal process to allow a third party to receive another individual's Social Security benefits."

The Honorable Janet C. Hall in her Decision of April 11, 2000 at the U.S. District Court of J.D. New Haven, @ Bridgeport, CT on a page 2-Footnote to plaintiff's Exhibit 4 (*exemption claim) opines:

@ Footnote - "There is an exhibit that appears to be a certification of a copy of a "Denial of Execution." (Pl. Exh. #7). However neither party produced any document that is a denial of the defendant's right to execute. Therefore based on the record before this court, the court concludes that Plaintiff's Exhibit 4 is a denial of plaintiff's (Martone) claim for execution and that there is no court document that purports to deny the defendant the right to execute."

Judge Hall concludes her decision at first parag. pge. 5- 5th sent.

> "This court, under the mandate of the Rooker-Feldman doctrine, does not have the power to review the decision of a state court judge.
> Moreover, because the court does not have the power to review or overturn the state court judge's decision, the court also cannot further consider whether the execution on the plaintiff's bank account was proper.
> The plaintiff's claim with respect to her bank account is therefore dismissed for lack of jurisdiction."

Citation - Harris v. Bailey- 1983-WD,VA 574 F Supp 966-

> "States garnishment procedures are invalid under the Supremacy Clause of the United States Constitution - Article 6, Clause 2 - as being in conflict with 42:USC407, where procedures provide judgment creditor with means of circumventing federal exemption provided in § 407, by permitting creditor to freeze debtor's bank account without regard to whether it contained Social Security benefits."

The Summary Order of June 23, 2003 filed at the Court of Appeals - 2nd Circuit @ the Thurgood Marshall Courthouse in the City of New York at pge. 2 - ultimate par. summarizes:

"The District Court (Janet C. Hall, Judge) dismissed Martone's complaint, relying on the Rooker-Feldman doctrine, noting that in her section 407(a) claim, she was asking the court to overturn the Connecticut court's decision rejecting her claim of exemption."
"That doctrine bars federal courts other than the Supreme Court from reviewing state court judgments. except under narrow circumstances not applicable here. See e.g. 28USC § 2254."
Without such an exception, the Full Faith and Credit Act, 28 USC § 1738, requires us to give the Connecticut judgment against Martone preclusive effect."

Ultimate sentence on page 4:

"For the foregoing reasons, the judgment of the District Court is hereby affirmed.

FOR THE COURT,
ROSEANN MACKECHNIE,
Clerk, 6/23/03"

REASONS FOR GRANTING THE PETITION

Wherefore, as a matter of law, I respectfully request our Supreme Court to overturn the Connecticut judgment rejecting my claim of exemption, in lieu of the U.S. Court of Appeals Second Circuit Summary Order on June 23, 2003 summarizing:

> "After briefs were filed in this case, the Neiswangers provided this court, via a letter sent pursuant to Fed.R.App.P.28(J) with a new affidavit from Dudra stating that the form is a "true copy of the Bank Exemption Claim as denied by the court."
> "It is clear that Martone's exemption claim, not the Neiswanger's execution request, was denied by the state court."

As a matter of Law, pursuant to Connecticut General Statute 52-352(a) and 52-352b and our United States Code titled 42 under subsection 407 of the Social Security Act. - Assignment.;

Citation: Francisco DiMartino v. Mark Richens, et al. Supreme Court of the State of Connecticut - #(16818-May 27, 2003-) 263 C 639." - Violation of 42 USC § 1983, EQUAL PROTECTION - "The defendants acted with malicious intent to violate the plaintiff's rights or unlawfully injure him with a callous or reckless disregard of his rights."

Wherefore, as a matter of law for myself and "every person" Pursuant to Section 1983 of title 42 of the United States Code, Equal Protection of the Law, that provides in the relevant part:

> "EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, REGULATION, CUSTOM OR USAGE OF ANY STATE, TERRITORY, OR DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED ANY CITIZEN OF THE STATES OR OTHER PERSON WITHIN JURISDICTION

THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY CONSTITUTION AND LAWS, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY OR OTHER PROPER REDRESS."

The recovery of my Social Security moneys paid and subjected to the judgment by Judge Silbert, and the legal process, the bank execution for the purpose of debt collection by the defendants, the Neiswangers, et al contrary to the provisions fully attended by CT. GEN. STAT. 52-352(a) & (b), and the Social Security Act-42:USCS § 407. Most importantly, Equal protection of the law, for every person, especially, the right of any person to any future payment under the Social Security Act - 42:USCS § 407 - provision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Beatrice Martone, Pro Se

Date: September 9, 2003

APPENDIX "A"

CTDC/BRCT
98-cv-1322
Hall

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 23rd day of June, two thousand and three.

PRESENT:

HON. ROBERT D. SACK,
HON. SONIA SOTOMAYOR,
Circuit Judges,

HON. GEORGE B. DANIELS,*
District Judge.

BEATRICE MARTONE,
Plaintiff-Appellant,

- v -

No. 02-9137

PHYLLIS NEISWANGER and JOHN NEISWANGER,
Defendants-Appellees.

---

* The Honorable George B. Daniels of the United States District Court for the Southern District of New York, sitting by designation.

Appearing for Appellant: BEATRICE MARTONE, pro se, Cheshire, CT.

Appearing for Appellee: MICHAEL E. RIZZO, Hamden, CT.

Appeal from a judgment of the United States District Court for the District of Connecticut (Janet C. Hall, Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of April 11, 2000, be, and it hereby is, AFFIRMED.

This case arises out of a dispute about the return of a security deposit for a leasehold terminating in 1996. The Neiswangers, plaintiff Martone's former tenants, obtained a small-claims court judgment against Martone for her failure to return the security deposit. When Martone failed to pay the judgment, the Neiswangers applied to the Superior Court of the State of Connecticut (Silbert, J.) for an execution against Martone's bank account. Martone filed a claim of exemption from execution, arguing that the bank account contained social security payments exempt from execution under 42 U.S.C. § 407(a) and related state law. The state court apparently rejected Martone's attempt to provide evidence of the social security payments because her filing failed to reference a case name or docket number. When Martone then did not attend a hearing regarding her claim of exemption, the claim was denied. The Neiswanger's also sought to execute the judgment via a lien against Martone's condominium.

Martone filed suit in the United States District Court for the District of Connecticut, claiming that the Neiswangers had taken her social security payments in violation of section 407(a), and that the lien violated Conn. Gen. Stat. § 52-352b(t), which protects primary residences from execution.

The district court (Janet C. Hall, Judge) dismissed Martone's complaint, relying on the Rooker-Feldman

doctrine, noting that in her section 407(a) claim, she was asking the court to overturn the Connecticut court's decision rejecting her claim of exemption. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). That doctrine bars federal courts other than the Supreme Court from reviewing state court judgments except under narrow circumstances not applicable here. See e.g., 28 U.S.C. § 2254. Without such an exception, the Full Faith and Credit Act, 28 U.S.C. § 1738, requires us to give the Connecticut judgment against Martone preclusive effect.

The district court dismissed plaintiff's remaining state law claims for lack of subject matter jurisdiction. Cf. 28 U.S.C. § 1367(c) (3) (when a district court has dismissed all of the claims in a case over which it has original jurisdiction, it may "decline to exercise supplemental jurisdiction" over remaining claims).

On appeal, Martone claims that the district court erred in finding that the Connecticut court had denied her request for an exemption. She claims that it actually denied the Neiswangers' request to execute on her bank account, and that the Neiswangers have been perpetrating a fraud on her, her bank, and the district court by claiming to the contrary. She bases this argument on an affidavit by Joseph M. Dudra, a state court clerk, stating that a document entitled "EXEMPTION CLAIM FORM BANK EXECUTION," is "a true copy of the bank execution denied by the court".

The document in question had been used by Martone to request an exemption. Martone had claimed on the form that her bank account was exempt as containing social security funds under Conn. Gen. Stat. § 52-352b(g). The form's second page contains a handwritten note reading "Denied (Silbert, J) 6-28-96". After briefs were filed in this case, the Neiswangers provided this court, via a letter sent pursuant to Fed. R. App. P. 28(j), with a new copy of the exemption form, along with a new

affidavit from Dudra stating that the form is "a true copy of the Bank Exemption Claim as denied by the court."

It is clear that Martone's exemption claim, not the Neiswangers' execution request, was denied by the state court. While we recognize that Dudra's original affidavit may have created legitimate confusion on the part of Martone regarding whether her exemption claim or the Neiswanger's bank execution request had been denied and she therefore needed to file an appeal or make a motion for reconsideration in order to protect her rights, we do not think that the procedure afforded to Martone was so inadequate as to render the judgment a nullity.

Martone also argues that section 407(a) grants her a right of action regardless of the Rooker-Feldman doctrine, citing Demp v. Emerson Enters., 504 F. Supp. 281 (E.D. Pa. 1980). In that case, as in this one, the plaintiff brought a section 407 claim against persons who had executed a state judgment against her bank account, which had contained social security payments. In that case, the state court judgment had been obtained via a procedure that had been held to violate the due process rights of a class containing the plaintiff. See id. at 283. Because the state court judgment had been procured through a procedure that failed to provide constitutionally adequate notice, it had no res judicata effect. See id. Here, Martone does not contend that she lacked notice or a meaningful opportunity to be heard at the original state court proceeding, and therefore cannot assert that, under Demp, the state court judgment is ineffective.

For the foregoing reasons, the judgment of the district court is hereby AFFIRMED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk

Lucille Carr 6/23/03

By: Date

APPENDIX "B"

WEBSTER BANK

April 28, 1998

Beatrice Rosato
12 Quarry Village
Cheshire, CT 06410

Re: Execution - Beatrice Rosato

Dear Ms. Rosato:

Pursuant to your request on Webster Bank; we are responding with the following documents:

A copy of the court order regarding your execution, exemption claim hearing on June 28, 1996. The order is signed and sealed by the clerk of the court.

If you have any questions regarding this matter, please contact me at (860) 314-3359 or fax (860) 314-5722.

Sincerely,

Michael E Trotman

Michael Trotman
Service and Process Coordinator

Enc.

APPENDIX "B"

STATE OF CONNECTICUT
JUDICIAL DISTRICT OF NEW HAVEN AT MERIDEN
SUPERIOR COURT

I, Joseph M. Dudra, and clerk of the Superior Court within and for the Judicial District of New Haven at Meriden, in the State of Connecticut, and keeper of the records and seal thereof, hereby certify that the above and foregoing is a true copy of the bank execution denied by the court (Silbert, J) on June 28, 1996, all as on file in the records of this court in the case entitled Jack Neiswanger, Etal vs. Beatrice Rosato, Docket Number SCM 9603-1724.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Meriden, in said District, this 9th day of July, 1996

..... Clerk

(s) _____ _____

JD-3104M New I-84

APPENDIX "C"

SOCIAL SECURITY ADMINISTRATION

Date: June 20, 1996
Claim Number: *** ** 0862
Name: Beatrice Martone (Rosato)

BEATRICE MARTONE (Rosato)
12 QUARRY VILLAGE
CHESHIRE, CT 06410-2057

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Other Important Information

MRS. MARTONE HAS BEEN GETTING SOCIAL SECURITY CHECKS SINCE 01/96 ON THE AMT OF $384.00 MONTHLY. HER CHECKS HAS BEEN DEPOSIT IN HER CHECKING EVERY MONTH.

If You Have Any Questions

If you have any questions, you may call us at 1-800-772-1213, or call your local Social Security office at 203-238-0346. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

DISTRICT OFFICE
470 MURDOCK AVENUE
MERIDEN, CT 06450

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

OFFICE MANAGER

No._____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

Beatrice Martone - PETITIONER

vs.

Phyllis G. and John Neiswanger - RESPONDENTS

PROOF OF SERVICE

I, Beatrice Martone, Pro Se, do swear or declare that on this date, September 9, 2003, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the U.S. mail properly addressed to each of them and with first class postage prepaid.

The names and address of those served are as follows:

Phyllis & John Neiswanger
16 Boardman DR Prospect, CT 06712

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2003

Beatrice Martone, Pro Se
(Signature)

Supreme Court, U.S.
FILED

03 550 SEP 9 2003

(2)

No.

In The
Supreme Court of the United States

Beatrice Martone, Petitioner

v.

Phyllis G. and John Neiswanger, Respondents

United States Court of Appeals - Second Circuit
Foley Square, in the City of New York

SUPPLEMENTAL APPENDIX

Beatrice Martone, Pro Se
12 Quarry Village
Cheshire, CT 06410
(203) 271-1807

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7 pp

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

BEATRICE MARTONE-ROSATO

v. 3:98CV1322 JCHDW

PHYLLIS GUARDIANO-NEIZWANGER
and JACK NEIZWANGER

JUDGMENT

This matter came on before the Honorable Janet C. Hall, United States District Judge, as a result of a complaint filed on July 10, 1998.

The Court has reviewed all of the papers filed in the case and on April 6, 2000, entered a Decision dismissing the plaintiff's claims for lack of subject matter jurisdiction.

Therefore, it is ORDERED and ADJUDGED that judgment is entered for the defendants and the complaint is dismissed.

Dated at Bridgeport, Connecticut, this 11th day of April, 2000.

KEVIN F. ROWE, Clerk

By _____
Deputy-in-Charge

Entered on Docket 4/11/00

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

BEATRICE MARTONE-ROSATO
Plaintiff,

v.

CIVIL ACTION NO.
3:98CV01322 (JCH) DW

PHYLLIS GUARDIANO-
NEIZWANGER, et al.,
Defendants

April 6, 2000

DECISION

This case originated with a dispute over a tenants' security deposit. The defendants, Jack and Phyllis Neiswanger, are the former tenants of a condominium apartment owned by the plaintiff, Beatrice Martone-Rosato, and her now former husband.

The plaintiff did not return the defendants' security deposit of $1,000 once they moved out, alleging they had conspired with her ex-husband to improperly rent the condo to the new tenants. The defendants sued the plaintiff in small claims court for return of the security deposit. The Neiswangers obtained a judgment against Martone-Rosato for twice the amount of the security deposit, because the security deposit had not been return within 30 days of the end of the lease, plus $30 in costs, for a total of $2,030. See Conn. Gen. Stat. §47a-21(d)(2). The judgment was to be paid by May 1, 1996. Ms. Martone-Rosato did not pay the judgment, so the Neiswangers applied for an execution against her bank account in June of 1996. Ms. Martone-Rosato filed a claim for exemption for the funds in the account on the ground that the account contained social security payments to her and therefore was exempt. The matter was set down for hearing before Judge Silbert in the

Superior (Small Claims) Court of the State of Connecticut. Ms. Martone-Rosato did not attend the hearing. On June 28, 1996, Judge Silbert denied the claim for exemption. See Plaintiff's Exh. 4.[1]

The sheriff executed the judgment against Ms. Martone-Rosato's bank account and the contents of the plaintiff's bank account were used to satisfy the judgment in part. This left $684 of the judgment unsatisfied, and the defendants filed on the land records a judgment lien against the plaintiff's condo for that amount. The condo at the time the lien was filed was the plaintiff's primary residence.

The plaintiff has now sued the defendants pro se in federal court alleging that they have improperly taken funds that were social security funds in violation of 42 U.S.C. § 407, and improperly filed a lien against her primary residence.[2]

First, with respect to the execution against Martone-Rosato's bank account, based upon the full records before this court, it is clear that the plaintiff is seeking to have this court review and overturn Judge Silbert's ruling that the funds in her bank account were not exempt as social security funds. However, the court does not have jurisdiction to do so under the principle of res judicata and the Rooker-Feldman doctrine.

The Rooker-Feldman doctrine was first announced by the United States Supreme Court in Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and was reaffirmed in District of Columbia Court of Appeals v. Feldman, 460

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[1] There is an exhibit that appears to be a certification of a copy of a "Denial of Execution." P Ex. 7. However, neither party produced any document that is a denial of the defendants' right to execute. Therefore, based on the record before this court, the court concludes that plaintiff's Exhibit 4 is a denial of plaintiff's claim for execution and that there is no court document that purports to deny the defendants the right to execute.

[2] The defendants are also pro se in this matter.

U.S. 462 (1983). The doctrine holds that, among federal courts, only the Supreme Court has subject matter jurisdiction to review state court judgments. See Johnson v. Smithsonian Institution, 189 F. 3d 180, 185 (2d Cir. 1999).[3] The doctrine also bars federal courts from reviewing claims that are "inextricably intertwined" with prior state court determinations. Id. (citing Feldman, 460 U.S. at 482 n. 16). As other federal courts have noted:

> [T]he fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment. If the injury alleged resulted from the state court judgment itself, Rooker-Feldman directs that the lower federal courts lack jurisdiction.

Johnson, 189 F.3d at 186 (quoting Garry v. Geils, 82 F.3d 1362, 1365 (7th Cir. 1996)).

In this case, the injury the plaintiff is claiming arose directly out of the state court judgment. The fundamental issue to be resolved in the state court hearing was whether the funds in the plaintiff's bank account were exempt social security funds. Similarly, the fundamental issue the plaintiff wishes to have this court decide is whether those same funds should have been considered exempt because they were social security funds. The state court already decided this issue. The state court's decision is inextricably intertwined with the plaintiff's claim in this federal court case, as the plaintiff is now arguing to this court that Judge Silbert's ruling was

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[3] Because the Rooker-Feldman doctrine concerns the subject matter jurisdiction of this court, it may be raised at any time by either party or sua sponte by the court. See Mocciov. New York State Office of Court Administration, 95 F.3d 195, 198 (2d Cir. 1996). In fact, the court has a duty to dismiss this case if it finds it lacks subject matter jurisdiction. This court therefore properly considers this issue despite the fact that none of the parties have raised it. See Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908).

erroneous. See Johnson, supra, 189 F.3d at 185. This court, under the mandate of the Rooker-Feldman doctrine, does not have the power to review the decision of a state court judge. Moreover, because the court does not have the power to review or overturn the state court judge's decision, the court also cannot further consider whether the execution on the plaintiff's bank account was proper. The plaintiff's claim with respect to her bank account is therefore dismissed for lack of jurisdiction.

With respect to the lien, Martone-Rosato's claim is not barred by the Rooker-Feldman doctrine, since the state court proceeding did not address the legality of a lien against Martone-Rosato's primary residence. The plaintiff raises a serious question that the lien is proper, given Connecticut law exempting an individual's primary residence from execution and the parties' agreement on the record that the condominium is, in fact, Martone-Rosato's primary residence. See Conn. Gen. Stat. §52-352b(t). However, this court cannot decide the merits of Martone-Rosato's lien claim because this court again lacks subject matter jurisdiction over the dispute.

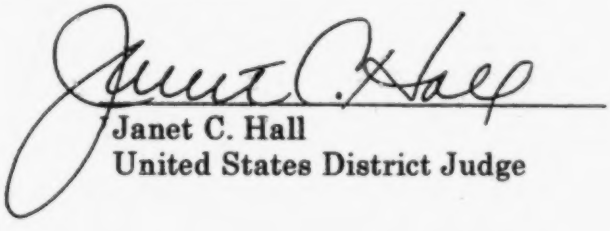
Federal courts are courts of limited jurisdiction. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936). Thus, this court can only hear claims that are specifically authorized by Article III of the United States Constitution and by statute. See, e.g., 28 U.S.C. §§1331 (federal question jurisdiction), 1332 (diversity of citizenship). The plaintiff's claim with respect to the lien on her property does not arise under any federal law or the Constitution. Rather, the plaintiff's claim arises out of state law and should have been litigated in state court. Further, the plaintiff and the defendants all reside in Connecticut, so the court has no jurisdiction based on diversity of citizenship. Finally, since the claim arising under the federal Social Security Act has been dismissed, the court has no basis for hearing the lien-related claim under supplemental jurisdiction. See 29 U.S.C. §1367(c)(3) ("The district courts may decline to exercise

supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction . . . .")

Accordingly, this court lacks subject matter jurisdiction over both of the plaintiff's claims and the plaintiff's claims are therefore DISMISSED.

SO ORDERED.

Dated at Bridgeport, Connecticut this 6th day of April, 2000.



Janet C. Hall
United States District Judge

No._____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

Beatrice Martone - PETITIONER

vs.

Phyllis G. and John Neiswanger - RESPONDENTS

PROOF OF SERVICE

I, Beatrice Martone, Pro Se, do swear or declare that on this date, October 7, 2003, as required by Supreme Court Rule 29 I have served the enclosed SUPPLEMENTAL APPENDIX on each party to the above proceeding or that party's counsel, by depositing an envelope containing the above documents in the U.S. mail properly addressed to each of them and with first class postage prepaid. Rule 14.5.

The names and (*Corrected) *address of those served are as follows:

Phyllis G. & John Neiswanger +
*485 Higgins Road, Cheshire, CT 06410
& that party's counsel +
Michael Rizzo, Esquire
2862 Whitney Avenue, Hamden, CT 06518

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 7, 2003.

Beatrice Martone, Pro Se
(Signature)

Beatrice Martone, Pro Se
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(203) 271-1807